

Evidence (Proceedings in Other Jurisdictions) Act 1975

1975 CHAPTER 34

An Act to make new provision for enabling the High Court, the Court of Session and the High Court of Justice in Northern Ireland to assist in obtaining evidence required for the purposes of proceedings in other jurisdictions; to extend the powers of those courts to issue process effective throughout the United Kingdom for securing the attendance of witnesses; and for purposes connected with those matters

[22nd May 1975]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Evidence for civil proceedings

1 Application to United Kingdom court for assistance in obtaining evidence for civil proceedings in other court

Where an application is made to the High Court, the Court of Session or the High Court of Justice in Northern Ireland for an order for evidence to be obtained in the part of the United Kingdom in which it exercises jurisdiction, and the court is satisfied—

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (“the requesting court”) exercising jurisdiction in any other part of the United Kingdom or in a country or territory outside the United Kingdom; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the High Court, Court of Session or High Court of Justice in Northern Ireland, as the case may be, shall have the powers conferred on it by the following provisions of this Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

2 Power of United Kingdom court to give effect to application for assistance

- (1) Subject to the provisions of this section, the High Court, the Court of Session and the High Court of Justice in Northern Ireland shall each have power, on any such application as is mentioned in section 1 above, by order to make such provision for obtaining evidence in the part of the United Kingdom in which it exercises jurisdiction as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.

(2) Without prejudice to the generality of subsection (1) above but subject to the provisions of this section, an order under this section, in particular, make provision—

- (a) for the examination of witnesses, either orally or in writing;
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property;
- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
- (e) for the medical examination of any person;
- (f) without prejudice to paragraph (e) above, for the taking and testing of samples of blood from any person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.

(4) An order under this section shall not require a person—

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or
- (b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the court making the order.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

3 Privilege of witnesses

(1) A person shall not be compelled by virtue of an order under section 2 above to give any evidence which he could not be compelled to give—

- (a) in civil proceedings in the part of the United Kingdom in which the court that made the order exercises jurisdiction; or
- (b) subject to subsection (2) below, in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) above shall not apply unless the claim of the person in question to be

exempt from giving the evidence is either—

- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
- (b) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid he may (subject to the other provisions of this section) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) Without prejudice to subsection (1) above, a person shall not be compelled by virtue of an order under section 2 above to give any evidence if his doing so would be prejudicial to the security of the United Kingdom; and a certificate signed by or on behalf of the Secretary of State to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) above to the transmission of evidence given by a person shall be construed accordingly.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

4 Extension of powers of High Court etc in relation to obtaining evidence for proceedings in that court

[The Attendance of Witnesses Act 1854 (which enables the Court of Session to order the issue of a warrant of citation in special form, enforceable throughout the United Kingdom, for the attendance of a witness at a trial) shall] have effect as if references to attendance at a trial included references to attendance before an examiner or commissioner appointed by the court or a judge thereof in any cause or matter in that court, including an examiner or commissioner appointed to take evidence outside the jurisdiction of the court.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

Amendment

Words in square brackets substituted by the Supreme Court Act 1981, s 152(1), Sch 5.
Repealed in part in relation to Northern Ireland by the Judicature (Northern Ireland) Act 1978, s 122(2), Sch 7.

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Amendment

Repealed by the Criminal Justice (International Co-operation) Act 1990, s 31(3), Sch 5.

Evidence for international proceedings

6 Power of United Kingdom court to assist in obtaining evidence for international proceedings

(1) Her Majesty may by Order in Council direct that, subject to such exceptions, adaptations or modifications as may be specified in the Order, the provisions of sections 1 to 3 above shall have effect in relation to international proceedings of any description specified in the order.

(2) An Order in Council under this section may direct that section 1(4) of the Perjury Act 1911 or [article 3(4) of the Perjury (Northern Ireland) Order 1979] shall have effect in relation to international proceedings to which the Order applies as it has effect in relation to a judicial proceeding in a tribunal of a foreign state.

(3) In this section “international proceedings” means proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority (whether consisting of one or more persons) which, in pursuance of any international agreement or any resolution of the General Assembly of the United Nations, exercises any jurisdiction or performs any functions of a judicial nature or by way of arbitration, conciliation or inquiry or is appointed (whether permanently or temporarily) for the purpose of exercising any jurisdiction or performing any such functions.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

Amendment

Sub-s (2): words in square brackets substituted by SI 1979/1714, art 19(1), Sch 1, para 26.

Subordinate Legislation

Evidence (European Court) Order 1976, SI 1976/428 (made under sub-ss (1), (2)).

Supplementary

7 Rules of court

[Civil Procedure Rules or rules of court under] section 7 of the Northern Ireland Act 1962 [may make provision]—

- (a) as to the manner in which any such application as is mentioned in section 1 above is to be made;
- (b) subject to the provisions of this Act, as to the circumstances in which an order can be made under section 2 above; and
- (c) as to the manner in which any such reference as is mentioned in section 3(2) above is to be made;

and any such rules may include such incidental, supplementary and consequential provision as the authority making the rules, may consider necessary or expedient.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

Amendment

Words “Civil Procedure Rules or rules of court under” and “may make provision” in square brackets substituted by the Courts Act 2003, s 109(1), Sch 8, para 177.

Date in force: 1 April 2005: see SI 2005/910, art 3(y).

8 Consequential amendments and repeals

- (1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Act.
- (2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Nothing in this section shall affect—
 - (a) any application to any court or judge which is pending at the commencement of this Act;
 - (b) any certificate given for the purposes of any such application;
 - (c) any power to make an order on such an application; or
 - (d) the operation or enforcement of any order made on such an application.
- (4) Subsection (3) above is without prejudice to section 38(2) of the Interpretation Act 1889 (effect of repeals).

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Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

9 Interpretation

- (1) In this Act—

“civil proceedings”, in relation to the requesting court, means proceedings in any civil or commercial matter;

“requesting court” has the meaning given in section 1 above;

“property” includes any land, chattel or other corporeal property of any description;

“request” includes any commission, order or other process issued by or on behalf of the requesting court.
- (2) In relation to any application made in pursuance of a request issued by the High Court

under [section 56 of the County Courts Act 1984] or the High Court of Justice in Northern Ireland under [Article 43 of the County Courts (Northern Ireland) Order 1980] the reference in section 1(b) above to proceedings instituted before the requesting court shall be construed as a reference to the relevant proceedings in the county court.

(3) Any power conferred by this Act to make an Order in Council includes power to revoke or vary any such Order by a subsequent Order in Council.

(4) Nothing in this Act shall be construed as enabling any court to make an order that is binding on the Crown or on any person in his capacity as an officer or servant of the Crown.

(5) Except so far as the context otherwise requires, any reference in this Act to any enactment is a reference to that enactment as amended or extended by or under any other enactment.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

Amendment

Sub-s (2): first words in square brackets substituted by the County Courts Act 1984, s 148(1), Sch 2, para 53; second words in square brackets substituted by the County Courts (Northern Ireland) Order 1980, SI 1980/397, art 68(2), Sch 1, Part II.

10 Short title, commencement and extent

(1) This Act may be cited as the Evidence (Proceedings in Other Jurisdictions) Act 1975.

(2) This Act shall come into operation of such day as Her Majesty may by Order in Council appoint.

(3) Her Majesty may by Order in Council make provision for extending any of the provisions of this Act (including section 6 or any Order in Council made thereunder), with such exceptions, adaptations or modifications as may be specified, in the Order, to any of the Channel Islands, the Isle of Man, any colony (other than a colony for whose external relations a country other than the United Kingdom is responsible) or any country or territory outside Her Majesty's dominions in which Her Majesty has jurisdiction in right of Her Majesty's Government in the United Kingdom.

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Initial Commencement

To be appointed

To be appointed: see sub-s (2) above.

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

Subordinate Legislation

Evidence (Proceedings in Other Jurisdictions) Act 1975 (Commencement) Order 1976, SI 1976/429 (made under sub-s (2)).

Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978, SI 1978/1890 (made under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Falkland Islands and Dependencies) Order 1978, SI 1978/1891 (made under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Gibraltar) Order 1978, SI 1978/1892 (made

under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Sovereign Base Areas of Akrotiri and Dhekelia) Order 1978, SI 1978/1920 (made under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Isle of Man) Order 1979, SI 1979/1711 (made under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Guernsey) Order 1980, SI 1980/1956 (made under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983, SI 1983/1700 (made under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Jersey) Order 1983, SI 1983/1700 (made under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Anguilla) Order 1986, SI 1986/218 (made under sub-s (3)).

Bermuda (Evidence) Order 1987, SI 1987/662 (made under sub-s (3)).

Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos Islands) Order 1987, SI 1987/1266 (made under sub-s (3)).

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS

Section 8(1)

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Initial Commencement

To be appointed

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.

Amendment

Repealed in part by SI 1979/1714, art 19(2), Sch 2.

Repealed in part by the Criminal Justice and Licensing (Scotland) Act 2010, s 203, Sch 7, para 11.

Date in force: 28 March 2011: see SSI 2011/178, art 2, Schedule.

Remainder inserts the Perjury Act 1911, s 1A and the Administration of Justice (Scotland) Act 1933, s 6(3), and amends the Maintenance Orders (Reciprocal Enforcement) Act 1972, s 44(2).

SCHEDULE 2 REPEALS

Section 8(2)

Chapter	Short Title	Extent of Repeal
19 & 20 Vict c 113	The Foreign Tribunals Evidence Act 1856	The whole Act.
22 Vict c 20	The Evidence by Commission Act 1859	The whole Act.
33 & 34 Vict c 52	The Extradition Act 1870	Section 24.
48 & 49 Vict c 74	The Evidence by Commission Act 1885	The whole Act.

53 & 54 Vict c 37	The Foreign Jurisdiction Act 1890	In Schedule 1 the entries relating to the Foreign Tribunals Evidence Act 1856, the Evidence by Commission Act 1859 and the Evidence by Commission Act 1885 but without prejudice to any Order in Council made in respect of any of those Acts before the commencement of this Act.
4 & 5 Eliz c 2	The German Conventions Act 1955	Section 1(3).
10 & 11 Eliz 2 c 30	The Northern Ireland Act 1962	In Schedule 1 the entry relating to the Evidence by Commission Act 1859.
1963 c 27	The Oaths and Evidence (Overseas Authorities and Countries) Act 1963	Section 4.
1966 c 41	The Arbitration (International Investment Disputes) Act 1966	In section 3(1), paragraph (b) together with the word "and" immediately preceding that paragraph. In section 7(e), subsection (2) of the section 3 there set out.
1968 c 64	The Civil Evidence Act 1968	Section 17(2).
1971 c 36 (NI)	The Civil Evidence Act (Northern Ireland) 1971	Section 13(2).

NOTES**Initial Commencement*****To be appointed***

To be appointed: see s 10(2).

Appointment

Appointment: 4 May 1976: see SI 1976/429, art 2.